

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

No. 2:14-CV-01038-JCC

**AMAZON.COM, INC.'S
MOTION TO SEAL**

NOTE ON MOTION CALENDAR:

Friday, June 10, 2016

Pursuant to Local Civil Rule 5(g) and the parties' Stipulated Protective Order (Dkt. 16, 17), Defendant Amazon.com, Inc. ("Amazon") moves the Court for an order sealing portions of Amazon's Supplemental Brief Regarding the FTC's Calculation of Monetary Relief and the Declaration of Jonathan M. Werner ("5/27/2016 Werner Decl.") filed in support thereto.

The type of confidential and competitively sensitive information at issue will be familiar to the Court. *See* Dkt. 27, 90, 140, 198, 199, 219, 237, 239, 241. The redacted portions of Amazon's Supplemental Brief and the Werner Declaration contain detailed, confidential financial data related to Amazon's Appstore sales and refunds. The Court has already recognized the sensitive nature of this information, having previously and repeatedly sealed the same information in this case. Dkt. 46 at 2 (ordering that Amazon's "confidential return-rate data" and "planning and financial information" be kept under seal); Dkt. 198 (identifying "Amazon's practice to rigorously guard this [financial] information's confidentiality even within

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1 the company” and finding “compelling reasons” to keep it under seal); Dkt 199 (“Those exhibits
2 contain the same sensitive information regarding Amazon’s refund rates that the Court has
3 already deemed appropriate for sealing.”).

4 As Amazon has previously outlined, that data and the included related calculations are
5 confidential, competitively sensitive, and treated as such within Amazon. 5/27/2016 Werner
6 Decl. ¶ 35; *see also* 4/20/16 Werner Decl. (Dkt. 220-1) ¶ 18; 2/10/2016 Rubenson Decl. (Dkt.
7 141) ¶¶ 3, 5. Amazon takes significant care to protect the confidentiality of this type of
8 nonpublic financial information, which data are not shared with anyone outside Amazon, and
9 access to the data is strictly limited to Amazon employees with a need to know the information.
10 5/27/2016 Werner Decl. ¶ 35; *see also* 4/20/16 Werner Decl. (Dkt. 220-1) ¶ 18; 2/2/2016 Werner
11 Decl. (Dkt. 91) ¶ 4 (explaining that Amazon prohibits distribution of this information outside of
12 Amazon, limits the people within Amazon who may access such information, stores the
13 information in secure locations, and conditions employee access to this information on the
14 execution of non-disclosure agreements); 2/22/2016 Werner Decl. (Dkt. 169) (same with respect
15 to additional financial data).

16 Public disclosure of such data would be useful to Amazon’s competitors and likely would
17 competitively harm Amazon. 5/27/2016 Werner Decl. ¶ 36; *see also* 4/20/2016 Werner Decl.
18 (Dkt. 220-1) ¶ 19; 2/10/2016 Rubenson Decl. (Dkt. 141) ¶ 5; 2/2/2016 Werner Decl. (Dkt. 91)
19 ¶ 5. For example, such data could help Amazon’s competitors better understand the cost
20 structure and profitability of its Appstore and thereby more effectively compete with Amazon
21 using information to which they would not otherwise have access. 5/27/2016 Werner Decl. ¶ 36;
22 *see also* 6/24/2015 Rubenson Decl. (Dkt. 28) ¶¶ 3-4; 7/15/2015 Rubenson Decl. (Dkt. 43) ¶¶ 3-4;
23 2/2/2016 Werner Decl. (Dkt. 91) ¶¶ 4-5; 4/20/2016 Werner Decl. (Dkt. 220-1) ¶¶ 18-19.

24 In contrast, as this Court has repeatedly concluded, the public interest in disclosure of the
25 limited sealed information is minimal. *See* Dkt. 198 at 4 (holding that “strategic planning and
26 financial information . . . is of a sensitive enough nature that it outweighs the *de minimis* public

1 interest in access . . . which would largely be commercial in nature.”); *Microsoft Xbox 360*, 2009
2 WL 481325, at *1 (finding that a company’s confidential business information overcomes the
3 presumption of public access to court records); *Hill v. Xerox Corp.*, 2014 WL 1356212, at *1
4 (W.D. Wash. Apr. 7, 2014) (Coughenour, J.) (holding that confidential information about
5 internal business operations “has little public value beyond the presumption [of access to court
6 files]” and “would primarily be of interest for Defendants’ competitors.”); *see also Apple Inc. v.*
7 *Samsung Elecs. Co.*, 727 F.3d 1214, 1225 (Fed. Cir. 2013) (reversing denial of motion to seal
8 Apple’s and Samsung’s “detailed product-specific financial information” because disclosure
9 “would put Apple and Samsung at a competitive disadvantage compared to their current
10 position”).

11 Compelling reasons therefore exist to maintain under seal the redacted portions of
12 Amazon’s Supplemental Brief and the Werner Declaration, consistent with the Court’s prior
13 orders sealing the same.

14 **LCR 5(g)(3) Certification**

15 Prior to filing this motion to seal, on May 26, 2016, counsel for Amazon met and
16 conferred via telephone with counsel for the FTC to discuss the need to file these documents
17 partially under seal, to minimize the amount of material filed under seal, and to explore redaction
18 and other alternatives to filing under seal. Amazon was represented in that communication by
19 Jeffrey M. Hanson. The FTC was represented in that communication by Heather Allen.
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1 DATED: May 27, 2016

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3 s/ Harry H. Schneider, Jr.

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Attorneys for Defendant Amazon.com, Inc.

CERTIFICATE OF SERVICE

I certify that on May 27, 2016, I electronically filed the foregoing Amazon.com, Inc.'s Motion to Seal with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to attorneys of record.

I certify under penalty of perjury that the foregoing is true and correct.

DATED this 27th day of May, 2016.

s/ Harry H. Schneider, Jr.